EVOLUTION OF THE AMERICAN VOTER

SOME historical scholar, devoted by taste and habits to close research, might well examine the records still accessible of our colonial age, to ascertain the laws and usages which prevailed before the American Revolution in each of the thirteen original colonies concerning the elective franchise.[1] For this is a subject whose exposition must depend, not upon *a priori* reasoning, but upon the facts. So far as the charters of that long adolescent period afford any light they make but three things plainly evident: (1) That voting was common in all these colonies under one reservation or another; (2) that in Rhode Island and Connecticut, under those highly liberal charters from Charles II. which served each state for a considerable space of this nineteenth century after royalty had been abolished, and in Massachusetts, too, under her earliest grants, this elective franchise was largely exercised; (3) that, for most of our colonial period at least, in most of the other colonies the voter's right was usually confined to the choice of local town and county officers and of local representatives in that single popular assembly or legislative branch which resembled the House of Commons in the mother country.

But when we reach 1776, and the era during which these thirteen commonwealths shook off united the British yoke and organized state governments apart, most of the written state constitutions are seen disclosing local predilections attaching to the right of elector. And from that date forward the evolution of the American voter may be fairly traced through a comparative study of these fundamental frameworks. No doubt under the earliest constitutions of such Revolutionary states the franchise was bestowed upon the people in accordance mainly with colonial practice and sentiment. Rhode Island and Connecticut, to be sure, retained colonial charters which left the matter largely to legislative discretion; but the other eleven states established constitutions for themselves. To take the first period of about twelve years which preceded the adoption of our federal constitution (1776–1788), comparison shows a certain homogeneousness in the policy of admitting freemen to participate by their votes in a representative and republican state government; while at the same time appeared various points of difference. In general the voter was to be a male resident of the state, at least twenty-one years

[1] Dr. Cortlandt F. Bishop, in his recent *History of Elections in the American Colonies* (III. Columbia College Studies, No. 1), supplies a scholarly essay on this topic.

of age; and "freeman" or "free white man" was a convenient term to designate him in the written systems of states, nearly all of whom still recognized to some extent the colonial institution of negro slavery. Among such residents or inhabitants the "freeholder," or owner of real estate, was specially favored for the right of suffrage in South Carolina, and further enjoyed peculiar privileges as to certain elections (for instance, in the choice of senators) in Virginia, New York and North Carolina. Other states, though less strenuous as to owning real estate, fixed a property qualification of one kind or another; Massachusetts, under her latest royal charter, and Maryland besides, requiring a voter to own either land or personal property to a stated limit; while the most liberal of Revolutionary constitutions in this respect, those of Pennsylvania and Georgia, conferred the suffrage upon all taxpayers. Sons of freeholders, though not paying taxes at all, had in Pennsylvania a special voting privilege; and Georgia favored all mechanics.

Georgia in her earliest state constitution made a futile effort, after the example of Virginia's legislature, to punish a voter's absence from the polls without good excuse by imposing a penalty. Bribery at the polls was punishable under Pennsylvania's constitution of 1776, yet lightly as compared with that of New Hampshire in 1784, which made conviction of bribery an utter disqualification from office. Under the Revolutionary constitution of New York in 1777 any elector at the polls might be required to take expressly an oath of allegiance to the state. Delaware's constitution forbade soldiers to approach the polls on election day.[1]

As for the appropriate method of voting these early states indicate at once their prior variance as colonies. For the written ballot Massachusetts, New Hampshire, Pennsylvania and Georgia pronounced a preference in their new organic law, while various other states by a more or less positive expression showed adhesion still to the old English mode of an oral or *viva voce* vote. In democracies a written or printed ballot must gain precedence constantly, not only for convenience of proof, but as an essential safeguard to the humbler voter's freedom of expression; yet the oral mode holds close relation with town meetings and local gatherings where courageous neighbors come together and where debate must precede action; for which reason the *viva voce* method held strong ground for such occasions. Connecticut under her charter option kept up that latter mode to a considerable extent in state elections until a constitution was framed, finding it quite a convenience for retaining the older and more influential townspeople in the lead. In Virginia

[1] Poore's *Constitutions*, *passim*, 1776–1784.

and the other states in close affiliation with her this oral expression was vaunted as the privilege of the free-born voter, to show the faith that was in him by an outspoken announcement of his candidate. New York, when the Revolution broke out, wavered between two methods. Her constitution of 1777 recites a prevalent opinion "among divers of the good people" that voting by ballot "would tend more to preserve the liberty and equal freedom of the people" than the prevalent *viva voce* mode; and accordingly the written ballot is therein sanctioned as a novel and experimental substitute, subject to the final discretion of the state legislature.[1]

We now reach 1789 and the establishment of a new and more perfect Union under the federal constitution. The forbearance which the framers of that instrument displayed in leaving the whole delicate regulation of popular suffrage to the several states deserves our lasting admiration. The new system could hardly have been adopted otherwise. As Mr. Bryce truly observes, this Union, so far as the federal form of government was concerned, might have developed into an aristocracy; but state direction and state institutions compelled it to become a democracy. For in the choice of federal representatives to Congress each state has constantly controlled the qualifications of its own electors; while the choice of senators and even of presidential electors has been left to the several state legislatures. All this suited well the temper of confederate states in the eighteenth century, and through the nineteenth results have been on the whole satisfactory. All discussion, all experiment over the extension of the suffrage, has been conducted within state confines, except perhaps as to negro suffrage, which civil war compelled the whole Union to consider as in some sense a national problem. Democracy and manhood suffrage have gradually gained federal ascendancy, through ascendancy in the several states, where regulation is easier and more elastic. And in the meantime the federal example since 1787 of dispensing with all religious or property tests for participation in civil government stirred quickly the states to emulation.

This Federal Union began, in fact, its operations in 1776 as an alliance of states conservative and somewhat aristocratic, for the most part, showing the force of English environment in distrustful qualifications which hedged the individual right to vote. We have seen that there were property tests for electors and candidates; and to some extent there were religious tests as well, though, generally

[1] Poore's *Constitutions*, *passim*, 1776–1784. Proxy voting, as in private corporations, prevailed very early in Massachusetts and adjacent colonies; and traces of this practice remained in Connecticut's election laws down to the final supersedure of her charter in 1819. Bishop's *History of Elections*, pp. 127–139.

speaking, no religious qualification was imposed for mere voters. South Carolina, the one state where caste and cavalier prepossessions stood the strain of democratic innovation down to the defiant strife of 1861, pronounced nevertheless in 1790 state abolition of religious tests for the voter by organic declaration. Kentucky's constitution in 1799 discountenanced religious tests whether for voters or for office-holders, after the example set by the United States. Delaware in 1792 enlarged the franchise so as to embrace every "white freeman" of full age and two years' residence who paid a state or county tax. Tax-paying became by the close of the eighteenth century the usual minimum standard which property qualification had reached, so far as constitutional expression was concerned; yet among the earliest new states Kentucky dispensed with even this before the century ended, as did also Vermont.[1] Maryland in 1810 abolished all former property qualifications, whether for office-holding or for voting, even to the paying of taxes. That the voter should be at least a tax-payer was however much longer insisted upon by most states.[2] South Carolina's constitution of 1790 adhered to the freehold qualification; "five hundred acres and ten negroes," or a real estate valued at £150 sterling clear of debt, was the standard set in her organic law.

Connecticut in her constitution of 1818 stated qualifications of property or militia duty or a state tax payment within a year. Massachusetts, abolishing all freehold or property qualifications for the voters soon after, clung still by the poll tax for a long period of this century. Delaware in 1831 abolished religious and property qualifications, except as to paying taxes. Virginia in 1830 made a technical enumeration as to property, having earlier left the legislature largely to itself. The democratic tendency in the new states before 1830 was towards dispensing with even the tax-paying qualification, thus giving freely the franchise and popular control of government to numbers and not property.[3] New York in 1821 dispensed with her former freehold privileges for voting, at the same time specifying various requisites of taxation or of service in the state militia or among the firemen. During the years 1836–1860 the final abolition of tax-paying as well as of property-holding requirements became very marked in the changed constitutions of the several states. Yet there are states which to this day require the payment of a slight tax in order to vote, while Rhode Island still insists upon a property qualification in some elections.

[1] See Kentucky, 1792, 1799. "Every man" of full age of "quiet and peaceable behavior" who takes the oath to vote conscientiously. Vermont, 1793.

[2] Ohio, 1802; Louisiana, 1812.

[3] See Illinois 1818; Alabama 1819; Missouri 1820.

A buoyant and increasing confidence in the unregulated popular expression at the polls, for city and country alike, seems to have culminated in America about the middle of this century. So far as the white male inhabitants were concerned all constitutional change in the states had hitherto tended so to extend the franchise that the poorest local resident, not a criminal nor a dependent pauper, might readily take part at the polls with those who paid taxes and had a pecuniary stake in the government; while as for bribery and the criminal disqualification not unfrequently denounced in organic law, convictions had been rare and individual disfranchisement by the legislature still rarer. But now the native-born began to feel the evils of an unrestrained democracy, of incongruous migration from foreign lands, and of that organized machine in the largest cities which too often tampered with the ballot-box and induced riot and corruption at the polling-booths. Greater purity of the ballot and the elimination of fraudulent opportunities became henceforth a standing task for all good citizens. Hitherto no educational test had been applied to the common voter, but midway in this present century Native Americanism asserted itself. "No elector shall be qualified," declares Connecticut's amendment of 1855 in substance, "who cannot read the constitution or any statute of the state;" and Massachusetts by 1857 confined the ballot to such as could read the constitution in the English language and write their names. To such constraints upon ignorant suffrage those two commonwealths have ever since adhered, maintaining that practical experience commends the rule. This reading and writing test is not the true one for all cases, since sturdy and honest manual labor makes better citizens than a mental training perverted; foreigners may know their native language, if not ours; nor are the illiterate necessarily ignorant. Nevertheless moral fitness can only be partially tested by judicial conviction for crime, and approximate satisfaction is better perhaps than none at all. Meanwhile various other constitutions of the decade 1850–1860 are seen prescribing to one extent or another a registration system in the growing centres of population, so as to reduce the danger of false and repeated personation at the polls.[1]

The new state of Kentucky ordained that elections should last for three days at the request of any candidate, and new Tennessee followed by prescribing two consecutive days.[2] The eighteenth century was then near its close. Likely enough a similar usage had existed previously in Virginia or North Carolina. But the mischiefs

[1] Virginia 1850; Louisiana (as to New Orleans) 1852; Rhode Island 1854.
[2] Kentucky 1792, 1799; Tennessee 1796.

of frequent and prolonged elections have since impressed our American people; and by 1861 and the era of the civil war, elections were almost universally confined by state organic law to a single day, each newly admitted member of the Union favoring that principle.

That controversy as between the ballot and *viva voce* modes of voting whose origin has already been remarked continued far into the nineteenth century. Georgia in 1789, Pennsylvania and South Carolina in 1790, Kentucky in 1792, Vermont in 1793, Tennessee in 1796, each in turn gave fundamental preference to the modern ballot. But Kentucky, veering in her opinion, changed from the ballot in 1799 to *viva voce*, siding in practice apparently with the mother state, Virginia. Georgia's change of mind was somewhat similar.[1] And thus stood that issue at the close of the last century. Since then the use of the ballot under state fundamental law has advanced steadily toward universal acceptance throughout the Union.[2] Original states like New York and Maryland, which had once experimented with the *viva voce* method, abandoned it forever.[3] And the fair distinction drawn in 1790 by Pennsylvania's constitution is seen recognized in various other state instruments framed previous to 1850, that all elections shall be by ballot except those by legislators, who shall vote *viva voce*. For those in public station should be held by constituents to their public responsibilities and be judged by the record, while to the voter an honest independence as among candidates is the chief essential.

But while the method of voting remained debatable, we see in the various conventions of new states of the Mississippi Valley a disposition either to compromise or evade the present issue. Mississippi in 1817 at her admission ordained that the first state election should be by ballot and all future elections "regulated by law;" Alabama in 1819, that all elections should be by ballot until the assembly directed otherwise; and Indiana in 1816, earlier than either, that all popular elections should be by ballot, provided that the legislature might, if thought expedient, change in 1821 to the *viva voce* plan, after which time the rule should be unalterable. All such dexterous expedients seem to have ended, as they ought, in establishing permanently for each state concerned the written or printed ballot. But Illinois on the contrary put the burden of proof upon advocates of the ballot, just as Georgia had done in 1798; her new constitution of 1818 ordaining that all votes should be

[1] Georgia's constitutions of 1777 and of 1789 had favored the ballot, but that of 1798 required the electors to vote *viva voce* in all popular elections until the legislature *should direct otherwise.*

[2] See Ohio 1802; Louisiana 1812; Connecticut 1818.

[3] New York 1821; Maryland 1810.

given *viva voce* until the legislature enacted otherwise. Even such expedients, however, could not stem the current; for in 1848 Illinois permanently espoused the ballot under a new state constitution. Georgia made apparently no change with regard to legislative option, whatever might have been its course of action. Missouri's convention in 1820 seems to have evaded the issue altogether; while Arkansas in 1836 gave clear preference to *viva voce*, just as Illinois had done when first entering upon statehood. The tendency of the century had now become unmistakable for taking the popular vote by ballot; and Michigan's concession in 1835 that township officers might be elected *viva voce* marks the extreme limit for suffrage by voice and a show of hands, so far as American practice finally shaped out elections by the people.

Down to the civil war, however, while states such as we have mentioned might be thought doubtful in their dissent from the ballot, Virginia and Kentucky stood sturdily together to resist the gathering sentiment of sister states. And in the appeal to unflinching manliness at the polls these two states insisted still that every voter should show at the hustings the courage of his personal conviction. Custom and statute law seem to have fixed early the *viva voce* standard for the Old Dominion, though her organic law down to 1830 was silent on the subject. But Virginia's new constitution of that year gave to the filial Kentucky a pronounced support, by the declaration that "in all elections" to any office or place of trust, honor and profit the votes "shall be given openly or *viva voce*, and not by ballot." And once again in 1850 the emphatic and somewhat humorous expression of Kentucky's constitution, a few months earlier, was duplicated in the new Virginia document of that year, that "in all elections" whether by the people or the legislature "the votes shall be personally and publicly given *viva voce*, provided that dumb persons entitled to suffrage may vote by ballot." All this, however, won no more proselytes; for by this time all new states of the Union favored successively the ballot in their written constitutions; and while the civil war progressed, a decade or more later, Virginia recanted such views and conformed to American practice.[1] State reconstruction following the civil war completed the organic triumph of the ballot-box throughout the United States. Free from all military coercion in her organic institutions, Kentucky seems to have kept longest to the old method; but in 1891 her constitution, too, was remodelled; and one clause of that instrument expressly declares that all elections by the people shall be by "secret official

[1]Virginia and West Virginia, 1863–1864. Every voter shall be free to use an open, sealed or secret ballot as he may elect; West Virginia, 1872.

ballot." This full phrase sanctions the improved method of voting which our latest generation has adopted. Instead of the manifold private and partisan ballots once pressed upon each voter by rival canvassers at the polls, we now have in nearly every state, and as part of the organic law where new state constitutions or amendments dispose of the subject, an official ballot, publicly printed and prepared on what is known as the "Australian plan," on which appear the names of all party candidates for the voter's own secret mark of preference. A system, in short, guarding better than ever before the individual's choice and freedom from corrupt and insidious solicitation is the reform of the American franchise which signalizes the last decade of the nineteenth century.

The growing evils of machine politics and demagogism in our land are met by numerous provisions in the state constitutions of the last forty years, whose main object is to preserve at all hazards the purity of the ballot box and the rights of each honest voter. Hence are found many details as to ballot methods, registration, and the appointment of inspection officers to prepare and revise voting-lists, especially in the large cities. Those kept at asylums or prisons at the public expense are forbidden to vote, while bribery or intimidation at the polling places, and all false personation, are crimes severely denounced for punishment,[1] and fit reason moreover for depriving one of the rights of elector.

A certain brief period of local residence is usually made indispensable to adult exercise of the right of suffrage, such for instance as a residence within the state for two years and within the town half that time. One must at all events, according to most precedents, vote only at the place where he resides, and within the first half of this century local residence for both voter and representative candidate became strongly insisted upon, as it has been ever since.[2]

Various organic provisions of a miscellaneous character have qualified the electoral franchise. Thus South Carolina in 1810 expressly excluded paupers and non-commissioned officers of the United States from such exercise. State suffrage has been usually confined to the native-born and to those naturalized under the laws of the United States, except for residents in the last century during the Revolution or when the federal constitution was adopted.[3]

[1] See for such details the constitutions of Maryland (1867), Missouri (1875), Colorado (1876), and New York, amendments (1894). New York here provides for registration lists and a bi-partisan election board. A few states have shown a fundamental dislike to registration provisions, as in Texas, North Carolina and West Virginia constitutions, 1870–1876.

[2] *Semble*, that under South Carolina's constitution of the last century a freeholder might vote where he held land, even though not a resident.

[3] Vermont by 1828 abolished a right given in 1793 to denizens who were not naturalized citizens.

It has been usually denied expressly to paupers and confined criminals. During the civil war and subsequently, gratitude to the citizen soldier induced in various loyal states some special extensions of the franchise for the special benefit of that class of persons.[1] Idiots and insane persons are always implied and often expressed exceptions to the exercise of local suffrage. While the Native-American party existed in our politics, an amendment in 1858 to the ancient constitution of Massachusetts compelled an additional residence of two years within the jurisdiction of the United States subsequent to naturalization before any person of foreign birth should be entitled to vote or be eligible to office; but gratitude to the foreign-born who went forth to battle for the Union caused the repeal of that amendment in 1863. In various states at the Northwest the right to vote has on the contrary been extended to aliens declaring their intention even before they reach the full condition of naturalized citizens of the United States, but latterly some reaction from this policy has set in.[2]

Negro disqualification before the civil war and the national effort since that period to extend the suffrage to a once servile race we need not dwell upon. Under the fifteenth federal amendment all distinctions of race, color and previous servitude are forbidden; but while slavery lasted in America there were very few state constitutions outside of New England (Pennsylvania until 1838 being perhaps the only exception) where "free white men" or "white males"[3] was not the recognized definition of the state voter, whether in slave-holding or non-slave-holding states. Even in the era following the civil war the great state of New York would not consent to establishing equal negro suffrage until after a long political struggle which lasted until 1874. California in 1879 expressly excluded all Chinese from voting.[4] Hitherto the American rule with trivial exceptions has been under the most liberal conditions that of manhood suffrage; and the admission of woman partially or fully to the same privilege becomes an agitating issue, of whose final outcome in states already organized upon the old basis of government it is yet too early to judge.[5] That the legislature may disfranchise those con-

[1] See Massachusetts, 1881, as to paupers who had served in war.

[2] Texas and Minnesota in 1896 pronounced strongly for constitutional amendments more restrictive. See also New York (1894) forbidding a naturalized foreigner to vote within ninety days after receiving his naturalization papers.

[3] New York in 1821 established a partial and peculiar discrimination as to negro voters.

[4] *Semble* in conflict with the fifteenth federal amendment.

[5] See Minnesota's partial permit to the legislature in 1875; Utah's constitution as a state, etc.

victed of infamous crime is a permission, founded upon sound reason, which at this day is largely bestowed.

Under some of the earliest constitutions of the new federal epoch electors were specially privileged from arrest (except for specified heinous offences) during their attendance at the elections or while going and returning; and this privilege from arrest has become in this century a feature of many state constitutions.[1] And during our latest era the American disposition has increased to combine elections, so as to reduce their number and frequency and give the local people of a state relief from political turmoil and excitement. State and national elections have in consequence been set for the same day, where formerly they were held in different months of the same year; and biennial state elections for both the highest executive officers and the legislature are now decidedly preferred to those annual pollings once deemed essential to liberty.[2]

Not only in the extension of voting membership, but through increased opportunities for exercising the power to choose among candidates, has the elective franchise made immense progress during the past century in these American states. The choice of local, town and county officers at the polls has been constantly maintained from the colonial age, and more than ever do such incumbents derive their agency from the people. Instead of choosing members of a single representative assembly or of the most numerous branch only of the legislature, as formerly, the mass of voters in each state have become, through the gradual assimilation in representative character of the two houses of a state legislature, electors on a uniform basis of qualification to both state senate and house. While for years after American independence was declared the chief magistrate of many states was chosen by the legislature, that choice now vests in the general body of state voters instead, as does also that of most other high executive officers, and, by as nearly a direct process as the federal constitution permits, of president and vice-president of the United States besides. Finally, and as the full triumph of free suffrage longest opposed by conservative citizens, judges and all officials connected with the machinery of the courts are now chosen by the voters in nearly every state. The march of the American democracy to power has proved irresistible.

JAMES SCHOULER.

[1] Pennsylvania, Delaware, Kentucky and Tennessee, 1790–1799. The phrase is suggested by that clause of our federal constitution which defines the privilege for members of Congress.

[2] The old maxim was that "where annual elections end, tyranny begins."

THE AUTHORSHIP OF THE FEDERALIST

THE arguments presented by Professor Bourne in the last number of the AMERICAN HISTORICAL REVIEW on the authorship of the disputed numbers of *The Federalist* appear to me open to a very serious objection so far as they attempt to prove the authorship by mere resemblance to ideas to be found in other writings of the same men, or by the use of certain authorities in their references. Any one who has studied the period in which *The Federalist* was written must realize that the air was filled with certain principles and facts, which were used by the writers of *The Federalist* as well as by many others, and for this reason any attempt to settle the question of the disputed numbers from mere similarity of thought is necessarily unsafe. From the letters of "Brutus," the great opponent of "Publius," could be selected a series of extracts that would go far to prove that the former was the writer of the disputed numbers of *The Federalist*. The same conditions which produced a dispute as to authorship served to produce a likeness in the essays; for they were penned by men who had been reading the same books and listening to the same debates, and whose minds were therefore necessarily for the moment steeped with the same material. Undoubtedly, too, there was some consultation between the writers of "Publius," with inevitable mutual coloring, and the letters were written with such haste that no one essay could especially impress itself on the mind of the writer. But an even greater cause than this matter of "stock" phrases and exchange of ideas, for the confusion and resulting contradiction of the writers, was the fact that both Hamilton and Madison were members of the conventions called in their respective states to discuss the constitution, and in their speeches, necessarily, went over the same points that had been discussed in *The Federalist*. Hamilton was charged by an enemy with "retailing" Publius to the New York state convention, and a reading of Madison's speeches in that of Virginia shows that he, too, made